

REMARKS

Claim Objections

Claims 19 and 20 have been amended to respond to the claim objections in the office action. These amendments do not narrow, and are not made to respond to a rejection based on the statute.

35 USC §103

All claims stand rejected as obvious under §103. The base reference, Wilson, is cited primarily for basic components such as an interface, packet processor, memory, mapping and mapping processor configured to output a data stream.

All claim rejections rely further on the Kato reference (Pub. No. US 2002/0041756 A1). Kato is cited for the proposition that one PAT including program numbers is compared to another PAT including program numbers. Kato indeed appears to be making a comparison of two data structures. For the sake of this office action response it will be assumed to be comparing two PATS having program numbers in them.

The office action at page 4 goes on to state that the Kato reference discloses, suggests or motivates the claim limitation that if at least one program number in a current PAT is the same as one stored set of program numbers in a stored format table then the output data stream is output having that same program number from the stored format table, and, that if at least one input program number in the current PAT is not the same then the output data stream is output having reassigned (different) program number. In point of fact, the Kato reference teaches the opposite.

Again, teaching away is expressly called out in KSR v. Teleflex as affirmative evidence of non-obviousness and patentability. Not only does Kato teach away from the structure recited in the presently pending claims, it teaches the exact opposite.

Kato teaches the following:

“[0153] The program number comparison unit 110 is a circuit that compares values and judges whether they match or not and *if they match, generates a unique value that does not match other values.*

[0154] To be more specific, the program number comparison unit 110 compares (a) one or more program numbers received from the first program information extraction unit 106 with (b) the program number of the transition target program received from the second program information extraction unit 107. *If the program number comparison unit 110 finds any of the program numbers that matches the program number of the transition target program, the program number comparison unit 110 generates a unique number that is different from any of the program numbers received from the first program information extraction unit 106, and outputs the generated number as a comparison result, to the program information adjustment unit 115.*

[0155] On the other hand, if the program number comparison unit 110 *does not find any number that matches the program number of the transition target program, the program number comparison unit 110 outputs the program number of the transition target program as the comparison result, to the program information adjustment unit 115.” See pages 7-8.*

The Kato reference essentially repeats this disclosure at paragraphs 220 through 221 on page 11.

This of course is the opposite of what is claimed. What is claimed is that when the program numbers in the compared PATs are the same, then the same number is used. Kato expressly teaches that when the numbers “match” then that same number is not used in the output stream. Likewise the response of the present program in the event that there is not a match is the opposite of Kato. In the presently pending claims if there is not a

match then a program number is reassigned. Kato expressly teaches that when the numbers do not match, then one of the unmatched numbers is used in the output stream.

This only stands to reason when considering the radically different objects of the Kato device and the present invention. Kato responds to a problem that a digital video recorder has with switching channels between a stored recorded program on a stored transport stream and a real time program being broadcast on a present real time transport stream when those programs may have the same program number. In order to be able to switch channels between those two, a match renders the switch impossible and so matching program numbers must be changed. The action of the present invention as structurally recited in the claims is the opposite (matching numbers are kept and non-matching reassigned) because the present invention is directed towards responding to an entirely different problem: Unannounced and unclaimed program number changes received from the source of the program broadcast. In order to continue real time display of the program, the matching program numbers are kept, while non-matching program numbers are reassigned a new number to create a match such that a continuous real time broadcast may continue.

Because the Kato reference teaches away, and because the Kato reference teaches the exact opposite of the structural recitations of the presently pending claims, Kato is actually evidence of non-obviousness of the pending claims. Accordingly, the presently pending claims are not obviously patentable over the Kato reference and the combination suggested in the office action.

In addition to teaching away, there are two other legal reasons why the combination of Kato reference with the other prior art references cannot support an

obviousness rejection under §103. First, the combination suggested would be inoperative to achieve the ends of the presently pending claims. If one of the non-matching program numbers are used in the output data stream, there will be a failure to match program numbers after they are changed in the real time data stream which will result in the original problem outlined in the background section of the presently pending application, i.e., no programming will be displayed. Because the suggested combination is inoperative, the suggested combination cannot support an obviousness rejection.

Additionally, KSR v. Teleflex holds that when an element claimed is performing the same function as that element performed in the prior art, then that similar functionality lends support to an obviousness rejection. The opposite is true in this case. The comparison operation of the processor structurally recited as an element in the pending claims is not performing the same function as it does in Kato; it is performing the opposite function. Again, under the logic of KSR, this would support the non-obviousness and therefore allowability of the presently pending claims.

Because the combination suggested in the office action cannot support an obviousness rejection under §103, the rejection should be withdrawn and the claims allowed.

Conclusion

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



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